

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5900 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

VADODARA DISTRICT PANCHAYAT THRO' DDO

Versus

RN PANDYA

Appearance:

MR HS MUNSHAW for Petitioner

Mr.P.V. HATHI for Respondent

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/02/97

ORAL JUDGMENT :

1. Rule. Mr. Hathi waives service of Rule on behalf of the respondent. With the consent of the parties the matter is taken up for final hearing today.

2. The respondent was working as a Talati-cum-Mantri under District Panchayat, Baroda. On the allegation of temporary misappropriation of a sum of Rs.2582.91 Ps.

for a period of 3 months and 21 days, an inquiry was held against the respondent and on charges being found to be proved, the respondent was dismissed from the service on 11.11.94. It is also pointed out that the respondent was also criminally prosecuted for the offences under Sections 409, 407 and 477 of I.P.C. He had been placed under suspension in 1983 during the pendency of the criminal case. He was acquitted in Criminal Case on 28.1.91 and thereafter a departmental inquiry was started against him on 16.8.93, but he was reinstated on 27.12.93 and ultimately as a result of the departmental inquiry, the dismissal order was passed on 11.11.94. Against this dismissal order dated 11.11.94 the respondent approached the Appellant authority and the Appeal was rejected on 21.7.95. Thereafter the respondent approached the Gujarat State Civil Services Tribunal. The Tribunal by its order dated 20.1.96 in Appeal No. 313 of 1995 has found that the charges have been rightly held to be proved but the penalty of dismissal has been found to be harsh. While allowing the Appeal in part and setting aside the orders passed by the Deputy D.D.O. and the D.D.O., it has modified the punishment to stoppage of 2 increments without future effect instead of dismissal from service. Mr. Munshaw appearing for the petitioner has submitted that looking to the element of misconduct, the punishment of stoppage of 2 increments is very light and the same is not proportionate to the element of misconduct, which has been found to be proved against the respondent.

3. Mr. Hathi has submitted that the respondent is prepared to sustain the punishment of stoppage of 4 annual increments instead of 2 increments without future effect.

4. I have considered the submissions made on behalf of both the sides. Looking to the fact that the amount of Rs.2582.91 Ps., which was alleged to have been temporarily misappropriated, was made good by the respondent immediately after the fact was noticed by the Department, looking to the respondent's defence of being over burdened and a hysterical person coupled with the further mitigating circumstance that the respondent has suffered the suspension since 1983 till December 1993, he has suffered the agony of criminal prosecution resulting into acquittal for a period of about 8 years and further departmental inquiry proceedings since August 1993 till the date of his dismissal and the consequential unemployment during the entire period uptill now and looking to the fact that neither the relief of backwages has been granted nor the same is now pressed by the

respondent, I deem it appropriate that the punishment of stoppage of 4 annual increments without future effect in the facts of this case would meet the ends of justice. In this view of the matter, the punishment of dismissal would stand substituted by the punishment of stoppage of 4 annual increments without future effect, but the respondent shall not be paid any wages for the past period during which he has not worked prior to the date of the order of the Tribunal i.e. 20.1.96 and so far as the period beyond 20.1.96 is concerned, the petitioner-District Panchayat, Baroda shall pay 50% of the wages to the respondent till the date he is reinstated in service and the reinstatement orders shall be issued by the petitioner at the earliest possible opportunity but in no case later than 28.2.97. The due amount for the period beyond 20.1.96, as ordered by this court, shall also be made available to the respondent on or before 30.4.97. Ordered accordingly.

5. This Special Civil Application is thus allowed in part and the directions, as aforesaid, would govern the rights and obligations of the parties henceforth so as to bring an end to the entire controversy and the litigation. Rule is made absolute accordingly with no order as to costs.